EXHIBIT B

Dockets.Justia.com

JL - I need to set up special orders I should ask Julee anything else

Camelot sales were $800,000 LY

JL - See me. Did you review w/ EOB?

JL

Defective allowance? Ad $?

May 25, 1999

Julee Landau
Transworld Entertainment

RE: KARAOKE TRADEOUT

Dear Ms. Landau,

I have reviewed the information you sent regarding trading out your current karaoke stock for our product. I added up the numbers on your inventory report and came up with a current "On Hand Stock" of 34,294 cassettes and 10,307 CDs, for a total of 44,601 pieces on hand. You show 28,640 cassettes sold and 12,343 CDs sold, for a total of 40,983 sold. That's about 30% CD sales and 70% cassette. I counted 425 different CD titles that you carry and estimate that you carry between 850 to 1,000 different Cassette titles in stock. As I reviewed the titles and songs from a catalog listing, I found that Sound Choice has duplicated the same best selling songs over and over across many different titles. The 'key' songs are used on various cassettes and CDs to carry the other not-so-popular songs. On top of that, their pricing is 20% higher than ours. We believe the better approach is to combine all 'key' best seller songs onto fewer titles and sell them at a reasonable price.

With that in mind, I would like to suggest the following. As a regular program, carry only our 50 best selling CDs and Cassettes in stock initially, with a mix of 60% cassettes and 40% CDs. As we add new releases, we will notify you and you may want to add them to your inventory. Other titles may be special ordered by your customers.

We will trade your on hand Sound Choice stock straight across for our product, piece for piece, with our 50 best selling titles. Realizing that your on hand stock continues to sell, we will begin by sending you half the total trade out product to get your stores started. Then you send us the Sound Choice product. Once we receive all of the Sound Choice cassettes and CDs you are planning to trade with us, we will send you the balance of the trade out, based on the actual quantity we receive from you. We will need you to ship us the Sound Choice product within 30 days of receiving our initial shipment of product in your stores so we may recoup our costs in a reasonable amount of time. We would also like you to pay the freight both ways on the tradeout shipments. We will not accept opened Sound Choice product on the tradeout.

The trade out product (Priddis CDs and Cassettes) may not be returned for cash credit. However they may be exchanged for other Priddis titles. Priddis product ordered on regular terms may be returned for cash credit.

In addition to the trade out, we will ship you a total of 1,000 units, payable on regular Net 60 or 60 Days EOM terms. 600 cassettes and 400 CDs of the same best selling titles. This will allow us a nominal income for our tradeout efforts. Then we hope to see ongoing orders from you as the product sells. explain

I feel that, because Sound Choice is not allowing you to return product, you should keep their displays at least until the tradeout pieces you receive from us are sold. We can give you stickers to put over the top of their spinner rack headers if you want. Then after the tradeout items are sold off, we can send you our own racks based on our regular terms indicated below.

Pricing and other regular terms are as follows:

PRICING	Cassette	CDG
MSRP:	$9.95	$14.95 - $19.95 - $24.95
Your Cost:	$4.65	$ 7.00 - $ 8.98 - $11.49

FREIGHT
To Stores: Prepaid. No cost to you on outgoing orders of 20 pieces or more (any title mix) shipped to your distribution center or directly to your individual retail outlets. Smaller orders will be charged the cost of shipping via UPS.

Direct To Customers: We can ship special orders direct to your customers for a total freight charge of $3.00 per order plus $1.50 handling. This is for regular ground freight. There would be an additional charge for express.

PAYMENT
Net 60 days or 60 Days EOM depending on how you pay your invoices.

RETURNS
Returns are accepted with RA #. Transworld is responsible for freight cost on returns.
(Tradeout items are returnable for exchange only)

MINIMUM ORDERS
No Minimum. We will accept any size order, as small as 1 item (special orders, for example).

POP DISPLAYS
Book shelf type display and all sizes of spinner racks available free when enough product is ordered to fill the display (except during our exchange of Sound Choice Product). Catalogs available at no charge. I would again like to suggest, in addition to a regular karaoke section, placing certain karaoke CDs right in the bin along with an artist's regular CDs.

SPECIAL ORDERS
We will accept special orders for any title in our catalog. We will ship direct to your outlets or direct to the customer's home. We also accept special orders for custom CDs. We put any mix of songs from our catalog onto one CD, with a minimum of 5 songs and a maximum of 15 songs per disc. The list price is $5.00 per song with your cost being $3.00 per song.

I have enclosed a list of the product we propose putting in your stores. I have also noted the best selling Sound Choice titles and how they correspond with what we will put in.

If I have missed anything, let me know.

Sincerely,

Rick Priddis
President

EXHIBIT C

TRANS WORLD ENTERTAINMENT VENDOR APPROVAL REQUEST FORM

This section TWEC only
Vendor ID # 26850 Leverage% 0
Date Rec'd 6/11/99 Entered 6/16/99 IP Terms code 26
Entered by CW Product Descrip. Kareoke
Date submitted to A/P ____ completed by ____

NEW ____ REVISION X Type? Update

Vendor Name: PRIDDIS MUSIC LLC
Address: ~~P.O. BOX 345~~
Corp. Offices ~~PLEASANT GROVE, UT~~
PO's, Corresp. ~~84062-0345~~
etc. to be sent.

Telephone 801-785-0949
800 #: 326-3062
Fax #: 801-785-6705

~~Remittance~~ ~~Address~~: New Address Jan 2001
(for checks) 790 North 200 East
(If Different) Lindon, UT 84042

Co. Officers/Officials:
President RICK PRIDDIS (phone ext)
VP of Finance MARK JOHNSON (phone ext)
VP of Sales DAVID TOMLINSON (phone ext)
Financial Contact A/R, Credit MARK JOHNSON (phone ext)
EDI contact RICK PRIDDIS
Advertising Contact RICK PRIDDIS (phone ext)
Order Processing Contact DAVID TOMLINSON (phone ext)
Regional Sales Manager (phone #)
If separate address / and fax # for Regional Mgr. list below:

Vendor D/C Address Where Prod. is shipped from (Jan 2000) 790 North 200 East

Shipping Address for Returns to be sent. PRIDDIS MUSIC LLC ~~220 EAST 750 NORTH~~ LINDON, UT 84042

Submit RA Requests to if different than above and if a specific person is required. ATTN: DAVID TOMLINSON (OK 2000)

Rep. Company (if any)
Address/
Phone ____ Fax

Local Salesperson (if any) (phone #)

Products Purchased by TWEC:
____ Accessories/Electronics
____ Books ____ Magazines
X Boutique (describe) Kareoke
____ Computer Software & Accessories
NO Music Software ____ Cutouts / closeouts
____ Video Games & Accessories
____ Video Software

Payment Terms
Discounts Note open order exceptions on PO's. Dating:
2 % of Cash Discount for timely payment?
— % of Cost Discount off retail price.
None Leverage % - Denotes an A/P balance of: Inventory minus Returns, times Leverage %, must be maintained.

Discount	Net	Days
2 %	60	60 Days EOM
0 %		90 Days EOM
0 %		120 Days EOM
%		6% 180 $1.38 ONLY

Other (explain) NO CUT OFF

All terms will be considered NET unless discount % is noted

1% additional Discounts for store 26 or store 4 orders must be off the bottom of each invoice.
*Please note. All terms are END OF MONTH. Product checks are processed at the end of each month and are subject to leverage deductions.
All invoices are subject to the monthly cut off date of the 20th and possible cash discounts for payment processing

W9# 841387094

Requirements to complete this form ALL vendors must supply a sample copy of an ACTUAL INVOICE, & PACKING SLIP. (NO BLANK SAMPLES) A SIGNED W9 FORM. THE TWEC YR 2000 COMPLIANT FORM & A POLICY MANUAL IF AVAILABLE NO ✓

Freight Terms: **** NOTE PREPAID DENOTES VENDOR IS RESPONSIBLE FOR ALL FREIGHT CHARGES.
X Prepaid to Distribution Center, all orders no exceptions.
____ Prepaid to Distribution Center, but only with minimum order o Pieces: Dollars:
____ Prepaid to stores for drop shipments all orders no exceptions.
X Prepaid to stores for drop shipments, with minimum order of: Pieces: 20 Dollars
____ TWEC pays freight. FOB Origin, for shipments to Distribution Center
____ TWEC pays freight FOB Origin, for shipments to stores

1) need W9 Rcd

VENDOR NAME: Priddis Music LLC
VENDOR ID # ASSIGNED BY A/P 26850

Drop Ship Policy -- THIS SECTION MUST BE COMPLETELY FILLED OUT FOR ALL VENDORS, & REQUIREMENTS EXPLAINED.

YES Does this vendor have DROP SHIP capabilities?
YES Will TWEC be using this vendor for Drop Ship orders? If no buyer must initial here ______
YES Any Product Cost Difference For Drop Ship orders? Explain ADD $1.00 PER ORDER IF UNDER 20 PIECE
NO Any minimums for drop ship orders? Explain
YES Can this vendor accommodate all TWEC Drop Ship requirements listed below?
YES Have these requirements been explained to the vendor?

Requirements for Drop ship All vendors must be able to provide PACKING SLIPS to the Stores with the Product when shipped. (the TWEC PO# must be listed) AND a separate INVOICE to the TWEC Home Office for payment processing. All vendor documents including packing slips, invoices, and required monthly statements must include the TWEC vendor ID #, ship-to store # and address.

See freight section for freight terms.

Return Policy

X 100 % Returnable no exceptions (REGULAR ORDERS) ~~50 % Returnable~~
Only Defectives are 100% Returnable
X Other-Explain COMPETITOR TRADE-OUT ITEMS EXCHANGEABLE ONLY
If penalties: Explain WHY(Penalties are unacceptable to TWEC)

Please Note: If the Return Policy will differ from the above for any order, a Revision must be approved PRIOR to the Order being placed. Incentive%

Advertising Policy (Co-op, Procedure, Rebates, Deduct from Invoice, etc.)

YES
X NO
Describe PRIDDIS WILL APPROVE ADVERTISING DEDUCTIONS FROM INVOICE ON A PER ADVERTISEMENT BASIS.
**** If Deducted from INVOICE, Vendor must show Totals BEFORE and AFTER the Credit

This section TWEC use only and must be completed by the buyer prior to approval and set up.

Any rebate program? If so explain. none
Anticipated Purchases (Buyer Use) $ 100,000 Annual
Reasons for selecting this Vendor: Karaoke product
Alternate vendor for this product: none

VENDOR & HOME OFFICE APPROVAL REQUIRED

New Vendor or Revision
Requested by:(TWEC buyer) Joanne Maggio
Position / Title: Asst. Boutique Buyer

Reviewed By TWEC A/P Dept. [signature] 6/15/99
Date reviewed:

Authorizations:

VENDOR Vendor Signature [signature] Title: PRES. Date 6-7-99
Print Name RICK PRIDDIS
TWEC VP/ Merchandising [signature] Date 6/7/99
TWEC VP/ Finance Date

**Vendor Number Assigned 26850 Date Entered: Updated 6/14/99

**(This # must appear on all invoices, packing slips & monthly statements which must be supplied to TWEC)

TWEC WILL NOT UNDER ANY CIRCUMSTANCES BE LIABLE FOR INTEREST, FINANCE, SERVICE CHARGES, LEGAL FEES, OR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES, COSTS, FEES, OR EXPENSES OF ANY KIND. THE VENDOR ALSO ACKNOWLEDGES AND AGREES THAT THE BUSINESS TRANSACTED PERSUENT TO THIS ACCOUNT HAS SUBSTANTIAL CONTACT WITH THE STATE OF NY. ANY EFFORTS TO SEEK LEGAL RECOURSE OF ANY KIND AGAINST TWEC SHALL BE COMMENCED EXCLUSIVELY IN THE COURTS OF THE STATE OF NY.

**** ALL INFORMATION CONTAINED WITHIN THIS FORM IS TO BE CONSIDERED LEGAL AND BINDING

- agreed to pay $1.00 for special orders

EXHIBIT D

Point Of Sale Display Agreement

This Agreement (the "Agreement") is entered into and effective as of October 1st, 1999 (the "Effective Date") by and between PRIDDIS MUSIC LLC (Vendor), having a principal place of business at 278 East 750 North, Lindon, UT 84042, and TRANSWORLD ENTERTAINMENT CORPORATION (Buyer), having a principal place of business at 38 Corporate Circle, Albany, NY, 12203.

Recitals

Buyer desires that Vendor place point of sale displays, at Vendor's expense, in various store locations owned by Buyer.

AGREEMENT

In consideration of the mutual covenants and obligations set forth below, the parties agree as follows:

1. Definition of "Point Of Sale Display". Point of sale display (display) will consist of a plastic free standing floor model 'spinner rack', holding up to 240 cassettes and/or CDs. The Priddis Music LLC name and logo will appear on the header portion of the display.

2. Cost of Display. The cost to Vendor of each Display is $132.00 plus shipping. Vendor makes display available to Buyer free of charge if Buyer purchases enough cassette/CD product to fill Display.

3. Terms. Vendor agrees to advance a display to each store location, as requested by Buyer, against future purchases from Buyer to Vendor. Buyer agrees to continue it's best efforts in purchasing and selling Vendor product until enough product has been purchased to fill all Displays shipped by Vendor to Buyer.

4. Ownership. Vendor will own title to all displays until such time as Buyer has completed it's obligation to purchase enough Vendor product to fill all displays shipped by Vendor to Buyer. Ownership will transfer to Buyer after one (1) year if Buyer has completed it's purchase obligation. In the event that Buyer should default on the responsibility to fill all displays, and discontinues purchasing and/or selling Vendor product, Buyer shall return all displays to Vendor in good condition, at no cost to Vendor.

5. Exclusive Use. Displays shall be used exclusively for the promotion of Vendor product. No product from competing companies shall be shown on, or in connection with Vendor Displays.

6. Term. This Agreement shall continue in full force and effect for a period of one (1) year from the date hereof and shall be automatically renewed for successive one (1) year periods thereafter, unless either party elects, before the commencement of any renewal period, to terminate this Agreement by providing written notice thereof to the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

PRIDDIS MUSIC LLC

By: [signature]
Richard L. Priddis
Title: President

TWEC

By: Julie Landau
Name:
Title:

EXHIBIT E

FILED
DISTRICT COURT
04 JUN 25 AM 10:56 Copy
SALT LAKE DEPARTMENT
BY________
DEPUTY CLERK

LOREN D. MARTIN (2101)
MARTIN & NELSON, PC
An Association of Professional Corporations
139 East South Temple, Suite 300
Salt Lake City, Utah 84111-1611
Telephone: (801) 538-0066
Mobile Phone: (801) 860-6400
Fax: (801) 538-0073

SCOTT W. LEE (4750)
RANDLE, DEAMER & LEE, P.C.
139 East South Temple, Suite 330
Salt Lake City, Utah 84111-1169
Telephone: (801) 531-0441
Fas: (801) 531-0444

Counsel for Plaintiff

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

450 So. State Street Salt Lake City, Utah 84111

PRIDDIS MUSIC, INC, Plaintiff, v.	COMPLAINT
TRANS WORLD ENTERTAINMENT, INC., Defendants.	Case No: Judge:

Plaintiff, Priddis Music, Inc. ("Priddis"), for cause of action against Defendant, Trans World Entertainment Corporation ("TransWorld") and alleges and states as follows:

JURISDICTION AND VENUE

1. Priddis is a Utah Corporation, in good standing, with its principal place of business at Lindon, Utah County, State of Utah.

2. Priddis manufactures and markets karaoke music products.

3. TWEC is a New York Corporation, in good standing, with its principal place of business at 38 Corporate Circle, Albany, NY 12203.

4. TWEC operates retail music and entertainment stores throughout the United States, doing business under the name of "FYE – For Your Entertainment."

5. Three TWEC stores are located in the State of Utah, one of which is identified as "FYE #1232" located at South Towne Center, 10450 S. State St. #1248, Sandy, UT 84070-3123.

6. The court has jurisdiction pursuant to U.C.A. §78-3-4.

GENERAL ALLEGATIONS

7. Beginning in 1999 TWEC requested that Priddis manufacture and supply certain materials and supplies for all TWEC stores.

8. The agreement was negotiated and a contract of sale resulted.

9. Transfer of title was upon acceptance.

10. Performance under the agreement commenced in 1999.

11. Shipments made during 1999 were to meet TWEC's initial stocking requirements under the contract. Consequently, Priddis books reflect relatively small receipts for the 1999 calendar year.

12. During 1999-2000 Priddis filled and shipped all TWEC orders and TWEC made timely payments therefor.

13. Commencing at about the beginning of 2001 the TWEC relationship and conduct changed. That change was such that by the end of 2004 Priddis determined that it must conduct extensive audits to determine the amount and nature of its losses and damages.

14. From analysis after audit Priddis believes and therefore alleges that TWEC's conduct not only reflects lack of good faith but that such conduct was also willful and malicious, consistent with a TWEC pattern of dealing and conversion.

15. Acting upon that belief, Priddis cancelled the contract near the end of 2004, declining to make further shipments.

16. That audit of for the years 2001-2003 reflects the following:

Financial Audit Summary of Accounts:

Orders Filled 1999-2004	$	6,192,198.76
Payments Made 1999-2004	$	(2,867,261.74)
On-Time Payment Discounts	$	(55,273.51)
Advertising Credits	$	(514,412.97)
Distribution Center Fees	$	(6,993.75)
BALANCE DUE	**$**	**2,748,256.79**

17. Demand has been made but nothing has been received.

PRAYER FOR RELIEF

WHEREFORE, Priddis prays that this court enter judgment as follows:

A. Judgment for violation of contract for Priddis of an amount that will put Priddis in as good a position as Priddis would have been in had there been no breach;

B. Judgment for Priddis in the amount of $2,748,256.79, for the price of goods sold and accepted but not paid;

C. An award of damages for conversion, willful and malicious conduct as the court may determine;

D. Judgment for Priddis sufficient to pay its attorney fees and costs plus such additional amounts as may be required in pursuit of collection of judgment;

E. Prejudgment and post-judgment interest as provided by law; and

F. Enter its order that JUDGMENT SHALL BE AUGMENTED IN THE AMOUNT OF REASONABLE COSTS AND ATTORNEYS FEES EXPENDED IN COLLECTING SAID JUDGMENT BY EXECUTION OR OTHERWISE AS ESTABLISHED BY AFFIDAVIT; and

G. Such additional and further relief as the court deems just.

DATED: June 25, 2004

Martin & Nelson, PC
Counsel for Plaintiff

By: [signature]
Loren D. Martin
Attorney at Law

EXHIBIT F

FILED DISTRICT COURT
Third Judicial District

NOV 04 2004

SALT LAKE COUNTY

By ________ Deputy Clerk

H. JUSTIN HITT, #8762
PLANT, CHRISTENSEN & KANELL
136 East South Temple, Suite 1700
Salt Lake City, Utah 84111
Telephone: (801) 363-7611
Facsimile: (801) 531-9747

Attorneys for Defendant Trans World Entertainment Corp.

IN THE THIRD DISTRICT COURT IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

PRIDDIS MUSIC, INC.,	**ORDER OF DISMISSAL**
Plaintiff,	
v.	Civil No. 040913245
TRANS WORLD ENTERTAINMENT CORPORATION, a foreign corporation,	Judge Anthony B. Quinn
Defendant.	

This matter came regularly before the Court on October 22, 2004 for oral argument on Defendant Trans World Entertainment Corp's Utah R. Civ. P. 12(b)(3) Motion to Dismiss for Improper Venue. Defendant Trans World Entertainment Corp. ("Trans World") was represented by H. Justin Hitt, and plaintiff Priddis Music, Inc. ("Priddis") was represented by Loren D. Martin. The Court having fully considered the parties' pleadings, including affidavits from both parties, oral arguments of the parties, and applicable decisions by the Utah Supreme Court and Utah Court of Appeals, the Court hereby makes the following findings of fact and conclusions of law:

1. The undisputed facts establish that Priddis agreed that any efforts to seek legal recourse of any kind against Trans World would be commenced exclusively in

the courts of the state of New York.

2. Priddis failed to offer any facts or evidence to show that the forum selection agreement was obtained by fraud, duress, abuse of economic power, or other unconscionable means.

3. Priddis failed to offer any facts or evidence to show that enforcement of the forum selection agreement would be unfair or unreasonable under the circumstances.

4. The Court did not consider and does not render any opinion with respect to the merits of Priddis's claims against Trans World nor Priddis's claimed damages.

Accordingly, the Court hereby ORDERS as follows:

1. Trans World's Utah R. Civ. P. 12(b)(3) Motion to Dismiss for Improper Venue is GRANTED.

2. Pursuant to the parties' forum selection agreement, the courts of the state of New York are the proper and exclusive forum for this action.

DATED this 4th day of Nov., 2004.

BY THE COURT:

Honorable Anthony B. Quinn
District Court Judge

Approved as to Form:

Loren D. Martin
Attorney for Plaintiff Priddis Music, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I caused to be hand-delivered this 22ND day of October, 2004, a true and correct copy of the foregoing Order of Dismissal to the following:

Loren D. Martin
Martin & Nelson
139 East South Temple, Suite 300
Salt Lake City, Utah 84111-1161